

Hillary E. Gitelman
Re: Sutro Tower Draft EIR
September 10, 1997
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Northridge and Kobe earthquakes sent a shock wave through the steel industry.

Changes Underway in Seismic Design Standards

On May 8, 1997, I chaired a public hearing on behalf of the Seismic Safety Commission (SSC) in Sacramento to discuss the progress on the near-source effects issue. There are major revisions in progress in the Uniform Building Codes (see Attachment 3, Craig D. Comartin testimony, page 2). I have also attached the testimony of Dr. Charles A. Kircher at the May 8 hearing (Attachment 4). The last 13 pages of Dr. Kircher's testimony document the building code changes that are in progress. I have also attached a paper by Dr. Paul Sommerville (Attachment 5) on *Forward Rupture Directivity in the Kobe and Northridge Earthquakes, and Implications For Structural Engineering*. This paper was referenced in the testimony of some of the presenters during the SSC hearing on May 8, 1997.

On July 10, 1997, the SSC hearing on Near-Source Effects On Tall Structures continued. I have attached three items from this part of the hearing: Attachment 6, memo from Fred Turner dated June 30, 1997; Attachment 7, Testimony of Farzad Naeim; and Attachment 8, Testimony presented by Gil Davis entitled "Faulty Towers?" I suggest you review these attachments, as they are very pertinent to the expansion and eventual safety of Sutro Tower.

Conclusions and Recommendations

It is clear we can expect a major earthquake in the Bay Area in the near future. It also is clear that the state of practice of earthquake engineering is in the process of major changes. The codes that were used when the Sutro Tower was designed and built and the 1991 codes used in the most recent analysis are outdated and are being replaced. It would be foolhardy to add a major new 125-foot beam to the tower without considering the new data from the Loma Prieta, Northridge, and Kobe earthquakes. There are many residents, a school, and two reservoirs within the fall zone of this tower.

The prudent course of action is to have a full dynamic analysis conducted by structural engineers fully knowledgeable of the new data. Because the effects of topographic ground-motion amplification and near-source directivity *must* be included, the dynamic analysis likely will use a seismic demand input several times larger than the demand ground motions used in the current analysis.

Lloyd S. Cluff

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The results of this dynamic analysis must be independently peer-reviewed by a knowledgeable structural engineer, as well.

I would be pleased to discuss this further to assist in resolving the issue of the seismic safety of the Sutro Tower.

Sincerely,

A handwritten signature in black ink, appearing to read "Lloyd S. Cluff", written in a cursive style.

Lloyd S. Cluff

Attachments 1 through 8

cc: Gene Zastrow, Sutro Tower

Graham & James LLP



September 10, 1997

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VIA MESSENGER

Ms. Hillary E. Gitelman
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Director

**Re: Sutro Tower Digital Television (DTV) Draft Environmental
Impact Report - 96.544E, dated July 9, 1997**

Dear Ms. Gitelman:

This firm represents Watson Communication Systems, Inc. ("Watson"), which is the owner and operator of the telecommunication tower site located on San Bruno Mountain in San Mateo County. We are writing on behalf of Watson to provide comments on the Sutro Tower Digital Television (DTV) Draft Environmental Impact Report - 96.544E, dated July 9, 1997 (the "Draft EIR"), especially to correct the inaccuracies and misleading statements in the record concerning San Bruno Mountain as an alternative to the proposed Sutro Tower project (the "Project").

PRELIMINARY STATEMENT AND SUMMARY

As an initial matter, we must express our grave concern and conclusion that the Draft EIR has substantial deficiencies and consequently fails to comply with the standards of the California Environmental Quality Act, Cal. Pub. Res. Code Sections 21000 et seq. ("CEQA"), the CEQA Guidelines and other applicable legal standards. The Draft EIR thus is legally inadequate. The City and County of San Francisco Planning Department and related agencies (the "City") therefore must reject the Project under CEQA, the City's Discretionary Review Policy for Sutro Tower adopted July 14, 1988, Resolution No. 11399 ("Resolution No. 11399"), and other applicable authorities.

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EXHIBIT D
TO THE DECLARATION OF PAUL MALTZER

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In brief summary, the Draft EIR is legally insufficient for the following reasons, discussed in more detail below:

- **Inadequate and Misleading Project Description:** The Draft EIR fails adequately to describe the full extent of the Project as required by CEQA. The Project description is also inaccurate and misleading. Certain assumptions on which that description are based, particularly concerning Federal Communications Commission ("FCC") mandates, are inaccurate. The City and the public thus cannot fully assess the environmental impacts of the Project.
- **Inadequate and Inaccurate Description of Alternatives, Particularly the San Bruno Mountain Alternative:** The Draft EIR fails to consider the alternatives to the Project fully and adequately. In particular, the description of the San Bruno Mountain Alternative, which is the primary alternative, is inadequate and inaccurately portrayed. San Bruno Mountain is both a viable and an environmentally superior alternative. As explained below, the site is viable because Watson already has one tower at the site which could accommodate DTV broadcasting and has obtained approval from the County of San Mateo for an additional tower which could accommodate DTV broadcasting. Such a tower could be constructed well within the FCC timetable, provided that the FCC timely grants exemptions to the five kilometer rule, discussed below. Moreover, as conceded by the Project sponsor, none of the identified environmental impacts of the Project (including potential health risks, visual quality, noise, transportation, and the like) would be experienced by City residents by installing DTV on San Bruno Mountain instead of on Sutro Tower (DEIR page 6-6). Relying on the cited 1993 Browne report, the Draft EIR acknowledges that "DTV signals from San Bruno Mountain would be able to serve all of San Francisco" (Draft EIR ["DEIR"] page 6-5). Thus the Draft EIR itself establishes that the City could be equally well served by DTV transmissions from the more remote San Bruno Mountain location instead of Sutro Tower, without compromising DTV signal quality for the City.

For these reasons, as further discussed below, the San Bruno Mountain alternative to provide DTV to the City is both a viable and environmentally superior alternative to the proposed Project.

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- **Failure to Identify and Address Significant Environmental Impacts and Mitigation Measures:** The Draft EIR is also insufficient for failing to identify any of the several significant impacts which will result from implementation of the Project and for failing to discuss corresponding mitigation measures.

The Draft EIR's failure to analyze the above topics in a legally adequate fashion violates CEQA. CEQA Guidelines, §§ 15120, 15121, 15123, 15126. If significant new information is added to the Final EIR in response to these and other comments to address the deficiencies noted, then the City must re-notice and re-circulate the EIR before certification pursuant to CEQA. Cal. Pub. Res. Code § 21092.1; CEQA Guidelines, § 15088.5. These comments and the anticipated comments of other interested parties, as indicated at the July 24, 1997, hearing, make recirculation appropriate in this case. Id.

SPECIFIC COMMENTS

I. THE DRAFT EIR IS INADEQUATE AND MISLEADING BECAUSE IT FAILS TO ACCURATELY DESCRIBE THE FULL EXTENT OF THE SUTRO TOWER PROJECT FOR DTV, AS REQUIRED BY CEQA.

Under CEQA, the Project must be fully, accurately, and adequately described. CEQA Guidelines §§ 15124, 15147. Notwithstanding this statutory mandate, the Draft EIR does not fully or adequately describe the Project, and is fraught with inaccuracies and misleading statements. Some such statements undercut the premises on which the Project is proposed.

A. The Project Description Is Inaccurate and Misleading Because The FCC Has Not Mandated The DTV Implementation Requirements Asserted In The Draft EIR Or Designated Sutro Tower As The Preferred Location For DTV Transmission

The summary of the Project (Section 1.0) is inaccurate and misleading in describing the purported need for the Project to comply with FCC requirements. Thus substantial doubt is cast on whether the Project sponsor has established a genuine need for the Project.

First, the Project sponsor misleadingly asserts (1) that the Project is being proposed to comply with the FCC mandate that "all television broadcast stations in

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the United States implement DTV signal broadcasting" (DEIR page 1-1, paragraph 2, last sentence; emphasis added) and (2) that the FCC deadline for beginning DTV signal broadcasts in the Bay Area is October 1998 (DEIR page 1-1, paragraph 3). The impression thus given is that the Project is needed to provide DTV transmission for all television stations in the Bay Area by October 1998. This is incorrect. In actuality, the FCC's initial implementation requirement applies only to the affiliates of the four major networks. See Fifth Report and Order, FCC 97-116, April 3, 1997, MM Docket No. 87-208, at ¶ 76. Further, the applicable FCC deadline for major network affiliates in the top thirty markets (including the Bay Area) is May 1, 1999, several months later than the Project sponsor asserts. Id. Other commercial stations need not construct DTV facilities until May 1, 2002, and non-commercial stations have until May 1, 2003 to construct facilities. Id. The October 1998 deadline asserted in the Draft EIR is thus wholly misleading. The only relevance of October 1998 is that it represents a voluntary commitment by three stations which currently transmit NTSC signals from Sutro Tower to implement DTV in order to capitalize on an anticipated, and well-publicized, pre-Christmas television set sale demand. (See attached "Broadcasting & Cable Magazine" article dated July 21, 1997.)

The Draft EIR also is written in such a way as to imply, improperly, that the FCC has required that DTV broadcasts be located at Sutro Tower because DTV broadcasts must be made from a location no greater than five kilometers from the site of the existing NTSC broadcasts (DEIR page 1-1). This is incorrect. The five kilometer radius requirement is intended to give flexibility to broadcasters. In fact, the FCC may grant exemptions to the cited five kilometer requirement. See Sixth Report and Order, FCC 97-115, April 3, 1997, MM Docket No. 87-268 Order¹), at ¶ 102.

Most disturbing, however, is the grossly misleading and inaccurate statement in the Draft EIR that the FCC has designated Sutro Tower as the "preferred location" for DTV transmission and/or has "required" DTV antenna installation at Sutro

¹ If a station wishes to locate its facilities outside the five kilometer radius, it must apply for approval from the FCC to move the facilities with a Section V-D application form, Appendix D to the Sixth Order, which includes the completion of a series of engineering surveys to determine that no interference occurs with other channels. (See Draft EIR at 6-4, paragraph 2.)

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Tower. See DEIR page 2-1, paragraphs 2 and 3; see also DEIR page 1-3, paragraph 3, first sentence. Contrary to the express statements in the Draft EIR, the FCC has not mandated that DTV be broadcast from Sutro Tower. The FCC has never made – nor is it empowered to make – any determination that “the Sutro Tower location... was... designated as the prime facility for television broadcasting for San Francisco stations” (DEIR page 2-1, paragraph 2, first sentence). That statement is completely false. Indeed, before Sutro Tower was built, television stations were transmitting their signals from San Bruno Mountain and several continue to do so. Notwithstanding television broadcast coverage from Sutro Tower for NTSC transmission, the Project sponsor itself has acknowledged the DTV signals from San Bruno Mountain can serve all of San Francisco (DEIR page 6-5).

B. The Project Description Is Inadequate Because The Physical Description and Discussion of Project Characteristics Are Inaccurate, Incomplete, and Misleading.

The physical description of the Project is deficient in that it suggests that the Project consists merely of the addition of a 125-foot beam which would be added to the tower at Level 6, approximately 755 feet above the base of the tower, with ten DTV antennas attached (DEIR page 1-3, second paragraph; page 2-8). Lacking in the Project description – although required by CEQA – are integral elements of the Project, including physical description of the ten proposed new antennas; auxiliary antennas, which are not presently proposed but which may be installed in the future (DEIR page 2-8); the seismic upgrade to Sutro Tower which recently received a categorical exemption from CEQA by the City but which is integral to the Project; and electrical use and tenant improvements (DEIR page 2-10). This approach results in impermissible segmentation. CEQA does not permit a Project sponsor to segment a Project to avoid full disclosure of the Project's significant impacts as a whole. CEQA Guidelines, §§ 15126, 15165, 15378(a), (c). Each of the inadequacies identified here is discussed briefly below.

First, the Draft EIR is deficient for failing to describe and discuss the impacts of the related antennas. First, there is no description of the size of the ten new DTV

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antennas and their diagrams and other visual depictions are insufficient.² The text's cryptic statement that "no auxiliary antennas are proposed at this time" (emphasis added) suggests that the Project may actually be much larger in scope. To the extent that auxiliary antennas are a fundamental part of the overall DTV system, or are anticipated to be added in a foreseeable time frame, they should be included within the Project description, and the foreseeable impacts they may have must be evaluated under CEQA. CEQA Guidelines, §§ 15126(a), 15165. Because auxiliary antennas are already in use at Sutro Tower for NTSC broadcasting, it is not merely speculative to assume that auxiliary antennas may be installed in the foreseeable future for DTV.

Further, the Draft EIR is misleading and inaccurate by omitting discussion of the related seismic upgrade to Sutro Tower, which the City Planning Commission determined was eligible for a categorical exception under CEQA. (See letter of City and County Planning Department dated June 6, 1997, attached.)³ The

² Figure 4, "DTV Antenna Front View" (DEIR at page 1-9), contains little detail and does not present a clear picture as to how the new 125-foot beam will be viewed by the public. Figures 7 and 9 (DEIR at pages 3-30 and 3-32, respectively) do not provide adequate pictures either. In particular, no side view is presented, to show the full impact of the addition and protrusion of the proposed beam. Also omitted from the photo montages in Figures 7 and 9 is any clear visual depiction of the ten digital antennas which are to be mounted on the 125-foot beam. Further, there is no evidence in the record to support the statement that the proposed "antennas that would be added to accommodate the Sutro Tower DTV project would not be readily noticeable, or create a substantial change in the appearance of the existing tower" (DEIR at page 3-28). In addition, that statement does not account for all visual changes associated with the Project.

Accordingly, the comments related to "Visual Quality Effects" (DEIR at pages 1-6 and 3-27 to 3-28) provide a misleading and incomplete picture of the visual effects of the proposed antennas and the proposed new 125-foot beam. In addition, the pictures do not depict the other "tenant improvements" which will necessarily be part of the new DTV antenna project, and which could have significant visual effects.

³ We understand that the Planning Commission approved of this exemption at a hearing on June 19, 1997.

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Project sponsor applied for this upgrade separately, although it is an integral part of the DTV Project implementation. This approach constitutes impermissible segmentation under CEQA. CEQA Guidelines, §§ 15126, 15165, 15378(a), (c); Laurel Heights Improvement Association of San Francisco, Inc. v. Regents of the University of California, 47 Cal. 3d 376 (1988). It also is misleading to the public thus to attempt to minimize the full extent of the Project and thus the full extent of the expected significant impacts.

The Draft EIR also fails in its Project description to adequately address anticipated increased electrical use, installation, and operation. Again without appropriate description or analysis of the potential significant impacts, the Draft EIR cursorily refers to unspecified tenant improvements by stating that the Project may "require additional building and electrical permits to allow Sutro Tower tenants to "make necessary improvements in their leased space to accommodate DTV equipment" (DEIR page 2-10).

As a result of these omissions and/or misstatements in the Project description, the Project sponsor has failed to meet the requirements of CEQA. CEQA Guidelines, §§ 15124, 15127. Further, as noted above, Project segmentation is impermissible under CEQA. CEQA Guidelines, §§ 15126, 15165, 15378(a), (c). The Draft EIR is thus legally inadequate.

C. The "Project Location" Discussion Contains Misleading Statements Concurring Sutro Tower's Feasibility.

Also misleading is the Draft EIR's statement concerning "Project Location" (DEIR page 2-3, paragraphs 2-3, second sentence), that the Mount Sutro site "is the most feasible-site in San Francisco from which radio and television signals can be broadcast without shadowing from other higher locations." Even assuming that this statement is correct that a more suitable site is not available within the City, it ignores San Bruno Mountain as a more desirable alternative physically located outside the City, but which could serve the City. In addition, this discussion is irrelevant because "shadowing" is only an issue with NTSC transmission, not with DTV transmission. Most relevant is the conclusion of the 1993 Browne report, relied upon by the Project sponsor, that for all three stations analyzed, DTV signals from San Bruno Mountain would be able to serve all of San Francisco (DEIR pages 6-4 to 6-5). The Draft EIR thus acknowledges that the fundamental

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purpose of the Project, i.e., DTV transmission, can be accomplished from San Bruno Mountain.

**D. The Draft EIR Fails To Address The Impact Of
Resolution No. 11399.**

CEQA requires a Project description to include all required governmental approvals. CEQA Guidelines, § 15124. CEQA also requires that an EIR discuss any inconsistencies between a proposed project and applicable general or regional plans. CEQA Guidelines, § 15125(b). Although the Draft EIR contains a fleeting reference to the City's Discretionary Review Authority pursuant to Resolution No. 11399 (Section 2.4.2, "Approvals," at DEIR page 2-10, last paragraph), it fails to address its significance and evades the fact that the currently proposed Project is inconsistent with its principles.

Resolution No. 11399 was enacted in 1988 as a response to the City's grave concerns regarding an earlier proposed expansion of the Sutro Tower. That earlier proposal was less extensive than the current proposal in that it involved a building permit application to expand the transmission building at the base of Sutro Tower to accommodate the transmission equipment, including antennas, for two additional television stations.

The City Planning Department determined at that time that such an expansion would be an addition not in general conformity with the plans and exhibits approved as a part of the original 1969 Conditional Use Permit for Sutro Tower (Resolution No. 5967). Thus, on June 16, 1988, the City Planning Commission held a public hearing to determine whether Sutro Tower could be granted conditional use approval for the proposed expansion.

Based on testimony received at the hearing about the potential health impacts associated with the proposed expansion, the Planning Commission was prepared to find (and had drafted a motion so to indicate) that the expansion would not pass the test set forth in City Planning Code Section 303. That section provides that a conditional use may be authorized only after making findings that, among other things, the proposed use will not be detrimental to the health, safety, convenience, or general welfare of persons residing or working in the vicinity and would not adversely affect the City's Master Plan (see Resolution No. 11399, page 2). The Planning Commission's proposed motion indicated that "in the face of testimony

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received regarding the possible health hazards . . . the Commission could not with clear conscience make the required Code Section 303 finding." Id.

Before the written motion could be finalized, however, the project proponent revoked its application. As a result, the Planning Commission adopted Resolution No. 11399 because of its substantial concerns about future proposed expansions and the potential detrimental effects thereof, to ensure that the Commission would have a policy of discretionary review over any and all proposed expansions at Sutro Tower. Id.

Given the significantly more extensive scope of expansion proposed by the current Project (to expand substantially the capacity of at least ten stations), plus new seismic-related construction, the Planning Commission would presumably have similar concerns today about the public safety and the potential inconsistency with the City's Master Plan.

The Draft EIR does not address why the Project, as currently proposed, should be viewed any differently from the consideration given to the earlier proposed expansion. The Draft EIR also does not address the consistency or lack of consistency with the Master Plan.⁴ In short, the Draft EIR is deficient in not addressing these issues.

II. THE DRAFT EIR IS INADEQUATE BECAUSE IT MISCHARACTERIZES AND INACCURATELY PORTRAYS THE ALTERNATIVES TO THE PROJECT, INCLUDING THE SAN BRUNO MOUNTAIN ALTERNATIVE.

Section 6.1, "Introduction," to the "Alternatives" in the Draft EIR improperly states CEQA's requirement for analyzing alternatives and its applicability to the proposed Project. In general, an EIR must describe a range of reasonable alternatives to the Project or Project location that could feasibly attain the basic Project objectives. CEQA Guidelines, § 15126. Further, the EIR should focus on alternatives capable of reducing the proposed Project's significant environmental effects. CEQA Guidelines, § 15126(d). The misstatements on DEIR page 6-1, second

⁴ The conclusory statement in Section 3.3 that "[t]he current project would not obviously or substantially conflict with any such policy" (DEIR page 3-33) is inadequate, particularly in view of the Resolution.

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paragraph. are generally based upon the faulty conclusions that (i) there are no significant impacts from the proposed Project, and (ii) alternatives such as San Bruno Mountain cannot provide DTV service to City residents.

A. The No Project Alternative Section Contains Misleading Statements.

Section 6.2, "No Project Alternative," contains misleading and irrelevant statements which imply, and may erroneously frighten the public into believing, that if DTV is not placed on Sutro Tower, then San Francisco would suffer some undescribed harm as no longer being the "primary city of license" for the television stations (DEIR page 6-3). This statement of opinion by the Project sponsor is simply false and appears designed to obscure from the public the environmental benefits of an off-site location. The FCC rules regarding the city of license guarantee the City coverage rights regardless of facility location. 47 CFR § 73.685(a). Thus, the City's status would be unaffected by the implementation of DTV at a site other than Sutro Tower (such as San Bruno Mountain).

Further, the discussion of the Project sponsor's reasons for rejection of the No Project Alternative mischaracterizes the FCC's requirements in that it suggests that Sutro Tower must provide "concurrent" NTSC and DTV transmission to comply with FCC rules (DEIR page 6-3). The FCC does not have any such requirement. Rather, the FCC requires that certain network affiliates transmit NTSC and DTV concurrently for a specified time period, but those broadcasters are not required to transmit DTV from the exact same location as their NTSC transmissions. See above discussion concerning the five kilometer radius rule and possible exemptions.

B. The Draft EIR Mischaracterizes And Inaccurately Portrays The San Bruno Mountain Alternative, Which Is An Environmentally Superior Alternative.

The Draft EIR, in Section 6.3, "Off-Site Alternatives," contains many factual misstatements and inaccuracies which may negatively influence the EIR decision-making process if not rectified - particularly concerning the most viable, and environmentally superior, alternative, San Bruno Mountain. In attempting to justify the Project sponsor's conclusion that the San Bruno Mountain Alternative is not

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the environmentally superior alternative, the Draft EIR contains statements which are flatly wrong and misleading to the public.

First, the Draft EIR attempts to discredit the San Bruno Mountain location by including an incomplete and misleading excerpt from a statement by Mr. Jay Watson, President of Watson, regarding NTSC transmission. As noted previously, NTSC coverage from Sutro Tower and San Bruno Mountain is not identical, but such service from San Bruno Mountain to the City is certainly not inferior. Second, NTSC coverage is irrelevant to the issue of DTV coverage because of the difference between the two technologies. More importantly, the Draft EIR acknowledges and relies upon the 1993 Browne report which established that for all three stations analyzed, "DTV signals from San Bruno would be able to serve all of San Francisco" (DEIR page 6-5).

The Draft EIR also asserts, without references to any study or other factual substantiation, that the maximum RFR levels at San Bruno Mountain would increase 11.7 percent of the FCC 96 Guidelines if DTV were added, as contrasted with a rise of 1.6 percent for Sutro Tower (DEIR page 6-6). Nevertheless, the Draft EIR also acknowledges that impacts related to the Project would not occur with the San Bruno Mountain Alternative (DEIR page 6-6). Thus, the Project sponsor acknowledges that with acceptance of the San Bruno Mountain Alternative, there would be no RFR impact on the City and thus no impact on the residents and workers located near Sutro Tower, compared with the identified impacts resulting from DTV placement at Sutro Tower.

The Draft EIR also suggests that the FCC prefers Sutro Tower, by referring vaguely to the FCC's "finding" in its "initial authorization of the existing Sutro Tower site" (DEIR page 6-7). As stated earlier, there was no such FCC finding and transmission at San Bruno Mountain has been ongoing for many years. The Project sponsor also falsely claims that the alternatives cannot provide adequate facilities for the existing television stations at Sutro Tower. As discussed above, San Bruno Mountain can provide adequate facilities for the television stations required to broadcast DTV on the FCC timetable. Further, contrary to the Project sponsor's assertions, and as established above, there would be no lesser household coverage in San Francisco if DTV is transmitted from San Bruno Mountain.

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Similarly, in an apparent effort to discredit the San Bruno Mountain Alternative, the text states that it is at a lesser elevation than Sutro Tower and would present "greater potential hazards to airspace navigation" (DEIR page 6-7). In fact, the addition of DTV at San Bruno Mountain would pose no threat to aviation. The existing towers at San Bruno Mountain (elevation approximately 1,300 feet) are fully within FAA height requirements. Any new tower which Watson may construct to add additional DTV capacity presumably would be FAA approved so long as it is not higher than Watson's tallest existing tower (325 feet).

The Project proponent has asserted, in rejecting the San Bruno Mountain Alternative, that it is at "lesser relative elevation" (DEIR page 6-7). However, the impact of height differs significantly between NTSC and DTV transmission. The FCC has two distinct sets of rules for each of these methods of transmission. See 47 C.F.R. § 73.684 (NTSC); § 73.623(e) (DTV). Thus, it is inappropriate to base conclusions about DTV coverage on the experience of NTSC.

After eliminating the physical reasons asserted above by the Project sponsor for rejection of the San Bruno Mountain Alternative, the remaining reasons for the sponsor's rejection of the San Bruno Mountain Alternative are, bluntly, economic. The Project sponsor asserts that if DTV is located elsewhere, then Sutro Tower could be rendered useless for its principal function of television broadcasting. In this rapidly changing era of telecommunications, with a constant influx of developments in technology, this assertion is by no means a foregone conclusion. All of the potential uses of DTV cannot currently be predicted with specificity, as broadcasters explore different uses of the new spectrum, including the use of multiple channels within the digital frequency allotment. In any event, the potential for economic loss if the Project is not approved does not compel the conclusion, in the face of factual corrections to the record, that the Sutro Tower Project is environmentally superior to the alternatives presented, including the San Bruno Mountain Alternative.

III. THE DRAFT EIR IS INADEQUATE BECAUSE IT FAILS ADEQUATELY TO DISCUSS SIGNIFICANT ENVIRONMENTAL IMPACTS AND REQUIRED MITIGATION MEASURES, IN CONTRAVENTION OF CEQA.

The Project sponsor has conceded in the Draft EIR that none of the impacts identified if the Project were approved and implemented would occur if the San Bruno Mountain Alternative were adopted instead. Therefore, we do not discuss

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in detail the shortcomings of the Draft EIR in failing to identify or adequately to discuss significant environmental impacts. Of course, CEQA requires that significant impacts be discussed in an EIR. CEQA Guidelines, §§ 15126, 15130(a). Contrary to CEQA, the Draft EIR cursorily concludes that "[t]he proposed project would not result in any potentially significant effects that could not be avoided if the project is implemented" (at page 5-1). At a minimum, the impacts discussion is incomplete because the Project description is inaccurate and incomplete, as discussed above. Therefore, the EIR must be augmented to discuss further the potential impacts on public health, existing zoning and plans,⁵ land uses, transportation, and the like.

Because, based on the Draft EIR, the full scope of the Project has not been and cannot be assessed, its significant impacts have not been discussed as required. Thus, this incomplete analysis has resulted in the erroneous conclusion that no

⁵ For example, the Draft EIR has insufficient discussion of the Project's alleged compatibility with existing zoning and plans, including the City's Master Plan, which provides policies concerning land use and physical environmental issues. First, the "compatibility" of the Project with such plans cannot be fully assessed because of the incomplete Project description. Moreover, the Draft EIR concludes, without any substantive discussion, that the Project "would not obviously or substantially conflict with any such policy [related to physical environmental issues in the City's Master Plan]" (DEIR page 3-33). The record lacks support for such a conclusion. At a minimum, an inference is drawn that there is some conflict with these plans. The City made a previous determination that the 1988 proposed expansion of Sutro Tower would conflict with specific goals contained in the City's Master Plan. Therefore, the Project proponent should be expected thoroughly and specifically to explain why a further proposed expansion of Sutro Tower does not present an inherent conflict with the goals of the City's Master Plan. Finally, under CEQA the presence of any conflict between a project and adopted environmental plans and goals of the community will normally have a significant effect on the environment (CEQA Guidelines, Appendix G, subpart (a)). Conversely, the absence of any conflict will not preclude a finding that a significant environmental effect exists. Thus, the lack of adequate discussion on compatibility with the Master Plan demonstrates but one fundamental conflict with the Project sponsor's determination that no significant impacts are associated with the Project.

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mitigation measures are required. The EIR must provide for adequate mitigation measures for the significant impacts identified in these and other comments.

For the foregoing reasons, Watson urges the City to reject the Draft EIR as legally insufficient under CEQA.

Thank you for your consideration of these comments.

Respectfully submitted,



Gilda R. Turitz

of

GRAHAM & JAMES LLP

GRT/reb

Enclosures

cc: Mr. Jay S. Watson (with enclosures)
Maureen Bennett, Esq. (with enclosures)

Our File: 30408.00017

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September 10, 1997

VIA HAND DELIVERY

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Environmental Review Officer
Planning Department
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Re: Sutro Tower Digital Television (DTV)
Draft Environmental Impact Report (No. 96.544E)

Dear Ms. Gitleman:

I represent the Twin Peaks Improvement Association (TPIA) and the Midtown Terrace Homeowners Association (MTHOA) with regard to the above-referenced project. This comment letter is submitted on behalf of TPIA and MTHOA to inform the City that the Draft Environmental Impact Report (DEIR) for the proposed Sutro Tower Digital Television (DTV) project (the "Project"), fails to comply with the requirements of the California Environmental Quality Act, Public Resources Code § 21000 et seq. ("CEQA"), and the CEQA Guidelines, California Code of Regulations, title 14, § 15000 et seq. and therefore must undergo substantial revision and be recirculated for public comment before it may be legally certified by the City.

As discussed below, the DEIR for the proposed Project, both in process and in product, is wholly inadequate, with the result that decision-makers and the public are deprived of information they require in order to assess the project fairly. CEQA requires an EIR to be an informational document which will inform public agency decision-makers and the public generally of the significant effects of a project, identify possible ways to minimize those effects, and evaluate project alternatives. The DEIR for the DTV Project fails to fulfill any of these fundamental goals. The DEIR provides insufficient detail on the scope of the Project and adverse impacts, incorrectly assumes without evidence that impacts are insignificant, fails to identify effective mitigation measures, and fails to adequately consider alternatives that are capable of mitigating the Project's significant impacts.

Many of the specific deficiencies in the DEIR have been and are being communicated to the City directly by my clients and other parties. This letter is intended to supplement and amplify those comments.

EXHIBIT E
TO THE DECLARATION OF PAUL MALTZER

EXECUTIVE SUMMARY

The DTV DEIR suffers from several systemic problems which undermine the accuracy and legitimacy of the entire document. Sutro Tower (the "Tower") was built prior to the enactment of CEQA has thus never before been subjected to environmental review. However, as the Proponent acknowledges, the Tower is a "deteriorated structure" which does not "meet current safety standards." It was designed in accordance with "safety standards applicable in 1969. Thirty years later, after decades of exposure and corrosion, the Tower is no longer at peak structural integrity and seismic safety." (See Exhibit A hereto, and discussion below.) Thus, this proposed DTV Project, which will add significant weight and windload to the Tower, must be evaluated in the context of overall structural and safety concerns for the Tower. But the DEIR does not do so. Instead, it focuses on radiofrequency radiation (RFR), which is a red herring to the extent that RFR deflects attention from the numerous other environmental issues.

The DEIR improperly segments environmental review of the DTV antenna installation from the related structural improvements. The proposed seismic and structural improvements are not categorically exempt from CEQA because, as acknowledged by the City and the Proponent, they will facilitate the DTV installation and may therefore cause significant adverse environmental effects. In addition, DEIR's descriptions of the Project and its environmental setting are inadequate because the project objectives are overly narrow, key elements of the proposal are omitted, and important aspects of the Project's setting are not described. The narrow Project objectives set forth in this DEIR exclude, by definition, any alternative sites. This defeats one of the central purposes of CEQA. In addition, the deteriorated condition of the Tower and the details of the beam and antenna installation process, including auxiliary antennas and transformers, are not discussed in the DEIR. Further, the RFR data is not current, and the DEIR fails to disclose the proximity of the Tower to schools, two reservoirs and a dedicated greenbelt.

The DEIR fails to analyze potentially significant adverse project impacts such as collapse or structural failure of the Tower, conflicts with the Community Safety element of the General Plan and Planning Commission Resolution No. 11399 (which found any expansion of the Tower's facilities would be detrimental to nearby residents). The DEIR also fails to analyze significant and adverse cumulative impacts from the Project including noise, visual impacts and interference with electronic equipment. Because the DEIR's significant impact analysis is fundamentally flawed, the DEIR improperly concludes that no mitigation measures are required.

The DEIR also violates CEQA because it fails to analyze any alternatives which could obtain the objectives of the Project. However, San Bruno Mountain is a feasible, environmentally superior alternative for DTV broadcasts which must be meaningfully analyzed.

For all of these reasons, the DEIR must be substantially revised and recirculated for additional public comment.

DISCUSSION

I. THE DEIR IMPROPERLY SEGMENTS ENVIRONMENTAL REVIEW OF THE DTV ANTENNA INSTALLATION FROM THE RELATED STRUCTURAL IMPROVEMENTS.

CEQA requires lead agencies to define the project under consideration as "the whole of an action." (CEQA Guidelines § 15378(a).) An EIR must therefore analyze all phases of a project, including reasonably foreseeable future expansion that may result from the initial phase. (CEQA Guidelines § 15126; Laurel Heights Improvement Ass'n. v. Regents of Univ. of Cal. (1988) 47 Cal.3d 376.) This requirement is necessary so "environmental considerations do not become submerged by chopping a large project into many little ones -- each with a minimal potential impact on the environment -- which cumulatively may have disastrous consequences." (Bozung v. Local Agency Form. Comm'n of Ventura County, (1975) 13 Cal.3d 263, 283-84; City of Santee v. County of San Diego (1989) 214 Cal.App.3d 1438, 1452.) A public agency may not segment a larger project into two or more small projects thereby masking environmental consequences; CEQA prohibits such a "piecemeal" approach. (Kings County Farm Bureau v. City of Hanford (1990) 221 Cal.App.3d 692, 720.)

The City is currently processing two related applications submitted by Sutro Tower, Inc. (the "Proponent"). In addition to the DTV antenna installation which is the subject of the DEIR, the Proponent is also seeking a building permit to authorize seismic and structural improvements to the Tower. (See Exhibit A, hereto, containing correspondence between the City and the Proponent regarding the proposed structural improvements.) As the Proponent's attorney acknowledges in her May 9, 1997 letter, the Tower is a "deteriorated structure" which does not "meet current safety standards." (Exhibit A.) The Tower was designed in accordance with "safety standards applicable in 1969. Thirty years later, after decades of exposure and corrosion, the Tower is no longer at peak structural integrity and seismic safety." (*Ibid.*) The proposed improvements include bolting steel plates and steel angles to the Tower to reinforce its legs and other members. (Exhibit A, 5-14-97 letter from GCA Strategies.)

These structural improvements are not categorically exempt from CEQA because they will facilitate the DTV installation and may therefore cause a significant adverse environmental effect. Indeed, the upgrades are closely related to the DTV proposal. It would strain credulity to maintain that the structural upgrades, which will cost \$500,000 and are proposed at the same time as the antenna project, are coincidental and unrelated to DTV. The seismic and structural work is necessary because the DTV antennas and their massive support beam will add significant weight and windload to the deteriorated Tower.

Indeed, both the City and the Proponent have acknowledged in writing that the two projects are closely related. According to the Proponent's engineering firm, the design studies for

the upgrades were based on the addition of "future equipment such as an HDTV antenna" and "the structural upgrades ... [will] allow[] for the addition of HDTV antenna in the future." (Exhibit A, 4/22/97 letter from Kline Towers.) Likewise, the City has determined, as stated in its May 24, 1996 letter to the Proponent, that "[t]he structural improvements proposed for Sutro Tower are necessary to permit existing stations to install ATV antenna." (Exhibit A.) There is no evidence or analysis suggesting that the deteriorated Tower could accept the new DTV antenna and beam and be in compliance with applicable regulations without the upgrades. In fact, the opposite is true.

A categorical exemption may not be utilized to evade CEQA compliance when there is any reasonable possibility that the agency's action may have a significant direct or indirect effect on the environment. (CEQA Guidelines § 15300.2(c); Wildlife Alive v. Chickering (1976) 18 Cal.3d 190, 206.) Thus, courts find the use of a categorical exemption improper for regulatory actions which may appear to be environmentally protective, if a fair argument can be made that the project may ultimately have a significant environmental effect. (See Dunn-Edwards Corp. v. Bay Area Air Quality Management District (1992) 9 Cal.App.4th 644, 654-55.)

In Dunn-Edwards, a regulatory agency tightened emissions standards for volatile organic compounds (VOCs) in architectural coatings and claimed (as does the Proponent here) that such action was categorically exempt under as an environmentally protective measure. (9 Cal.App.4th 652-655.) The court found the agency's use of a categorical exemption improper because the record contained evidence that the lowered emissions standard might prompt the use of more coats and more frequent applications of the lower quality products, thereby causing an increase in overall VOC emissions. (*Id.* at p. 657-58.) Because of the potential for adverse environmental effect, environmental review was required, and the agency's action constituted a prejudicial abuse of discretion. (*Ibid.*)

The situation here is also similar to that in McQueen v. Board of Directors of the Midpeninsula Regional Open Space Dist. (1988) 202 Cal.App.3d 1136, where the agency defined its project too narrowly in its notice of exemption. The Court of Appeal held that the use of the exemption for a land purchase was improper because no mention was made of the agency's simultaneous adoption of a use and management plan for the property. The narrow project definition was an example of "the fallacy of division," which can cause an agency to overlook a project's cumulative impacts "by separately focusing on isolated parts of the whole." (202 Cal.App.3d at p. 1144.)

As in the Dunn-Edwards and McQueen cases, even though the proposed structural upgrades are ostensibly to improve the Tower's safety and might not have adverse impacts if viewed in a vacuum, there is substantial evidence that they may nevertheless have significant adverse environmental effects because they will facilitate the DTV project. Thus, the upgrade activities are not categorically exempt and environmental review in full compliance with CEQA is

required prior to their approval.

Even if the upgrades could be properly described as a separate project, they would still need to be discussed in the DTV EIR in the context of a cumulative impacts analysis as a "closely related past, present, [or] reasonably foreseeable probable future project." (CEQA Guidelines § 15355.)

As a result, the upgrades must be analyzed in the same EIR as the DTV project so that the "whole of the action" is reviewed in a single environmental document. Comprehensive environmental review is necessary so that the effectiveness of the structural work can be properly assessed with regards to the seismic safety and integrity of the Tower, in light of the proposed installation of new DTV equipment.

II. IN ADDITION, THE PROJECT DESCRIPTION IS INADEQUATE BECAUSE THE PROJECT OBJECTIVES ARE OVERLY NARROW, AND KEY ELEMENTS OF THE PROPOSAL ARE OMITTED.

CEQA requires that an EIR contain a description of the proposed project including inter alia the project's characteristics and objectives. (Guidelines § 15124.) "An accurate, stable, finite project description is the sine qua non of an informative and legally sufficient EIR." (County of Inyo v. City of Los Angeles (1977) 71 Cal.App.3d 185, 193; see also Discussion following CEQA Guidelines § 15124.) Thus where a project description is curtailed, distorted or omits important aspects of the project, the EIR's entire analysis will be fundamentally flawed and the EIR cannot be legally certified under CEQA. (San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus (1994) 27 Cal.App.4th 713, 727; Santiago County Water District v. County of Orange (1981) 118 Cal.App.3d 818, 829.)

The project description in the DTV EIR is inaccurate, overly narrow, and omits key aspects of the project. To start with, as discussed above, the implementation of the structural and seismic upgrades must be included in the project description and analyzed in the EIR. In addition, the project description is also inadequate as follows:

- The project objectives are drawn overly narrowly. The DEIR states that the fundamental project objective is to enable *Sutro Tower* to provide concurrent DTV and NTSC broadcast signals. This objective is too narrow because it forecloses consideration of feasible alternative sites or projects which is impermissible under CEQA. (See, e.g., Kings County Farm Bureau v. City of Hanford (1990) 221 Cal.App.3d 692, 735-37; City of Carmel-By-The-Sea v. U.S. D.O.T., (9th Cir. 1996) 95 F.3d 892, 903-08; Save the Niobara River Association, Inc. v. Andrus (D.Neb. 1977) 483 F.Supp. 844, 862.) This issue is further discussed below in Section VII of this letter.

- The DEIR fails to provide the weight or constituent materials of the 125-foot long beam, or to explain how it will be hoisted 755 feet up the Tower. The DEIR also fails to explain how this beam (which is 3 feet wide by 3 feet deep and as tall as a 12-story building) will be attached to the Tower. The DEIR states simply that "[n]o power impact tools are anticipated to be necessary for the installation process." (DEIR at p. 1-3.) However, no other information is given regarding the installation process or what tools will be used. Will the beam be welded to the Tower? Bolted to the Tower? Tied to the Tower? Will additional moorings, cables or trusses be added? How will the antennas be attached to the beam? What safety precautions, if any, will be taken during the installation process to ensure that construction debris, tools, paint chips, etc do not fall on nearby residents or into the nearby reservoirs? The DEIR is entirely silent on these issues. However, such information is necessary so that reviewers and users of the EIR can assess the safety and adverse impacts of the installation process and the long-term impacts of having this additional 1,125 cubic foot beam plus its new antennas suspended an eighth of a mile above the neighborhood.
- The DEIR is ambiguous as to whether auxiliary DTV antennas will also be installed. The existing NTSC antennas have "stand-by" auxiliary antennas which broadcast when the regular antennas malfunction or are undergoing regular bi-monthly maintenance. (DEIR at p. 2-8.) Thus, it is reasonably foreseeable that the DTV antennas will also require auxiliaries. Installation and operation of auxiliary DTV antennas should be included in this project description. Likewise, the "additional data services" which the EIR states can be accommodated by the DTV antennas should also be described and included in the project description.
- The DEIR also fails to explain the "necessary [tenant] improvements" which it states may require additional building and electrical permits. The project description must describe and analyze the additional facilities, activities and permits necessary for the television station tenants to operate and maintain DTV and NTSC broadcasts simultaneously. In addition, since DTV allows multiple programs to be broadcast on a single channel, the existing stations may "sublet" broadcast capacity to other users. Thus, the possibility of a significant expansion of tenants and tenant activities should be considered. This is particularly important in light of City Planning Commission Resolution No. 11399 which found that expansion of the transmission building at the base of the Tower and the addition of new antennas would require a new conditional use permit and be "detrimental to the health, safety, convenience or general welfare" of nearby residents.
- The DEIR states that two additional on-site electrical transformers would need to be added (one for each 12 kilovolt feeder line) to serve the Tower. However, it fails to describe the installation, operation and maintenance of these transformers.

CEQA requires that the full scope and objectives of the proposed project be adequately defined at the outset of environmental review and remain consistent throughout the review process. "A curtailed or distorted project description may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the 'no project' alternative) and weigh other alternatives in the balance." (County of Inyo, 71 Cal.App.3d at pp. 192-193.)

Because the project description is not accurate or complete in light of the current circumstances, the DEIR is legally inadequate and may not be certified. An adequate DEIR would fully and accurately describe the whole of the activities under consideration, not just selected aspects of it.

III. THE DEIR'S DESCRIPTION OF THE PROJECT'S ENVIRONMENTAL SETTING IS INCOMPLETE AND RELIES ON STALE DATA.

"An EIR must include a description of the environment in the vicinity of the project, as it exists before the commencement of the project, from both a local and a regional perspective." (CEQA Guidelines § 15125; see also Environmental Planning and Information Council v. County of El Dorado (1982) 131 Cal.App.3d 350, 354.) However, the DTV DEIR's environmental setting discussion is deficient because it fails to adequately discuss existing environmental conditions, especially with regard to the structural integrity and seismic safety of the Tower. As a result, the DEIR is so obviously incomplete as to not meet the minimum requirements for disclosure.

Examples of the deficiencies in the DEIR's environmental setting description are as follows:

- The structural condition and seismic integrity of the Tower are not described. This is a particularly glaring omission in light of the statements of the Proponent's attorney that the Tower is a "deteriorated structure" which "after decades of exposure and corrosion, ... is no longer at peak structural integrity and seismic safety" and does not "meet current safety standards." (Exhibit A.) The DEIR must describe in detail the condition of the Tower in terms of its stability, seismic safety, metal fatigue, rust, corrosion, falling paint chips, and related issues. The currently applicable safety standards, pursuant to the City's Municipal Code, California Building code, Uniform Building Code (UBC), and Electronic Industries Association (EIA) TIA-222-F wind speed standards, at a minimum, should be set forth in

the DEIR. Such regulations are briefly referenced in the letter from the Proponent's engineering firm in Exhibit A hereto, but are not addressed in the DEIR. These and any other applicable standards must be explained, as well as whether the Tower currently complies with them. What earthquake magnitude can the Tower in its present condition withstand without damage? A description of such issues is a necessary part of the environmental baseline discussion so that the incremental Project effects of adding weight and windload to the Tower can be properly assessed.

- The description of adjacent land uses fails to identify two nearby public schools, two reservoirs at the base of the Tower, and the greenbelt, Sutro Forest, to the north and west of the Tower. No surveys for animal species of concern (i.e., endangered, threatened, etc) has been conducted. The City's emergency response and evacuation plans and routes for the area should also be described.
- The existing noise levels in the vicinity of the Tower must be quantified during a range of wind conditions. Simply stating that "[w]ind flowing through Sutro Tower on windy days has been perceived as a loud noise by some residents in the vicinity of Sutro Tower" (DEIR at p. 3-36) is not insufficient.
- The DEIR acknowledges that "[r]esidents in the vicinity of the Tower have complained about interference of the television/radio broadcasts with television and radio reception and with car theft alarm systems." (DEIR at p. 3-37.) However, no mention is made of interference with other equipment, such as computers, garage door openers, cellular phones and beepers.
- The DEIR should reference and describe the City's Planning Commission Resolution No. 11399 (1988) as an "adopted environmental plan[] and goal[] of the community." (CEQA Guidelines Appendix G, subd (a).) In Resolution 11399, the Planning Commission stated (1) that there is "substantial public concern surrounding the issue of electromagnetic radiation" from the Tower; (2) that the Planning Commission "could not, with clear conscience, make the required Code section 303 finding that ... [a proposed expansion of transmission facilities at the Tower] would 'not be detrimental to the health, safety, convenience of general welfare of persons residing or working in the vicinity.'"
- Even though the DEIR states that the main area of controversy involves radiofrequency radiation (RFR), it relies on incomplete, non-current data on the existing levels of RFR levels in the vicinity of the Tower. RFR was measured at a mere ten locations in December 1996 and there is no indication as to whether the regular or auxiliary antennas were operating that day. The bulk of the data relied on in the EIR (480 locations measured in 1988) is 9 years old, and was conducted with equipment that is less sensitive than that used today (i.e., a Holaday HI-3001 meter was used rather than an HI-3004).

(DEIR at p. 3-6.) In addition, there has been an expansion of transmissions from the Tower since 1988, particularly with regard to cellular antennas. The EIR also refers to subsequent measurements taken by Hammett & Edison in 1991 and 1993, but fails to provide the results. In addition, no mention is made of any relay or transmission towers that may exist in local off-site locations. It is crucial to have extensive, accurate and current data of the existing RFR levels on which to base the analysis of additional RFR

Because the DEIR lacks a proper description of the environmental setting, it is inadequate as a matter of law. (See San Joaquin Raptor, supra, 27 Cal.App.4th at p. 729.) Furthermore, the inadequate description of the environmental setting also makes unreliable: (1) the determination of whether all the environmental impacts of the project have been identified and analyzed in the DEIR; (2) all comparisons with alternative sites; and (3) a determination that all environmental impacts have been mitigated to insignificance. (Ibid.) The DEIR's failure to accurately and completely describe the project's environmental setting renders the document uncertifiable.

IV. THE DEIR FAILS TO ANALYZE POTENTIALLY SIGNIFICANT ADVERSE PROJECT IMPACTS.

An EIR must identify and focus on the significant environmental effects of a proposed project. (Pub. Res. Code §§ 21100(b)(1); 21061; CEQA Guidelines §§15126(a), 15143.) EIRs should be "prepared with a sufficient degree of analysis to provide decision-makers with information which intelligently takes account of environmental consequences." (CEQA Guidelines § 15151.) Identification of a project's significant environmental impacts is a central purpose of an EIR and is necessary to implement CEQA's policy that public agencies should not approve projects if there are feasible mitigation measures of project alternatives available to reduce or avoid the impacts. (Pub. Res. Code §§ 21002, 21002.1(a).)

In judging the legal sufficiency of an EIR, the focus is on "adequacy, completeness and a good faith effort at full disclosure." A number of court decisions have developed criteria for determining what constitutes a "reasonable" effort to analyze a projects' potential impacts. Kings County Farm Bureau v. City of Hanford (1990) 221 Cal.App.3d 692 is particularly instructive on this point. That opinion emphasizes that an EIR must support with rigorous analysis and substantial evidence the conclusion that environmental impacts will be insignificant. (Ibid.) The DEIR for the DTV Project lacks such support for its conclusions.

To begin with the DEIR's analysis of significant environmental effects is fundamentally flawed because, as discussed above, the scope of the project analyzed is inaccurate and unduly narrow, and the baseline environmental setting is not fully and accurately evaluated and described. In addition, the DEIR's analysis is also inadequate in at least the following areas: